IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1454 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMPYREE MAHAVIR - Appellant(s)
Versus
MOHANLAL L JANI - Defendant(s)

==========

Appearance :
MR MA BUKHARI for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MR CG MEHTA for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2006

ORAL JUDGMENT

Present appeal has been filed by the original appellant – original defendant (hereinafter referred to as “the defendant”) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated

28-7-1982 in Civil Suit No.4570 of 1978 in decreeing the said suit and declaring that plaintiff is the owner of the disputed superstructure and is also the tenant of the land on which the disputed superstructure is constructed. The learned trial Court further passed a decree directing the defendant, appellant herein to hand over the vacant possession of the disputed land to the plaintiff. The consequential order came to be passed by the learned trial Court with regard to mesne profit also.

2. The plaintiff filed the aforesaid suit in the learned City Civil Court at Ahmedabad for a declaration that he is the owner of the superstructure and that he is also the tenant of the piece of land in the estate of Rajnagar Rice and Pulse Mills and had constructed superstructure on it. It was averred in the plaint that he and the defendant both were dealing in clay, which was used for moulding work of brass and Aluminum articles. One Rajnagar Rice and Pulse Mills was the owner of land bearing survey No.140/1 situated in Rajpur Hirpur ward and the said land was known as Rajnagar estate. It was further averred that defendant was a tenant of the piece of land in the said estate and had constructed superstructure on it and was allotted No.526. It was

further averred in the plaint that the defendant sold to the plaintiff the said superstructure for Rs.3700/- on 18-5-1976 and handed over vacant possession of the superstructure to him and the defendant on that very day got executed some writing to that effect and he went away to Baroda. It was further averred that thereafter the plaintiff took the very piece of land on lease from Rajnagar Rice and Pulse Mills at monthly rent of Rs.20/- and he started using the said room as a godown to store his goods. It was further averred that on 4-1-1978, when the plaintiff went to his room, he saw that his lock was removed by the defendant and the defendant was occupying the said room and he started staying with his family. It was further averred that some goods and the clay and other materials were lying in the said room but the defendant did not allow him to remove the said goods and also did not vacate the room. A criminal complaint also came to be filed, however, the defendant was acquitted. It was further alleged that he i still paying monthly rent of Rs.20/- to the Rajnagar Rice and Pulse Mills and as the defendant has dispossessed him of the said room, he filed the aforesaid suit for mesne profit and damage of Rs.2400/-. The defendant resisted the said suit by filing written statement at Exh-11 denying the

allegation. A preliminary contention was also raised that the suit before the learned City Civil Court at Ahmedabad is not maintainable as the learned City Civil Court at Ahmedabad has no jurisdiction to decide the dispute with regard to tenancy and it is only the Small Causes Court at Ahmedabad has the jurisdiction.

3. The plaintiff was examined himself at Exh-23. Similarly, the defendant was also examined and certain documentary evidence, such as writings executed by the defendant, were also on record at Exh-43. Considering the documentary evidence as well as oral evidence, the learned trial Court held that the plaintiff is entitled to the declaration as prayed for and that he has proved that the defendant has sold the disputed superstructure to the plaintiff for Rs.3700/- and the defendant executed the writing on 18-5-1976 and had handed over the possession of the disputed superstructure to the plaintiff on the same day and accordingly, the learned trial Court decreed the suit and granted the relief as stated hereinabove. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court at Ahmedabad, the defendant has preferred the present appeal.

4. Shri MA Bukhari, learned advocate appearing on behalf of the appellant has mainly submitted only one ground that the learned trial Court has materially erred in holding that the learned City Civil Court at Ahmedabad had jurisdiction, as in the prayer clause in the suit, the relief sought was for a declaration that the plaintiff is the tenant, it is submitted that it is only the Small Causes Court of Ahmedabad would have jurisdiction and the learned City Civil Court at Ahmedabad has no jurisdiction. It is therefore, submitted that the judgment and decree passed by the learned City Civil Court at Ahmedabad is without jurisdiction and is a nullity.

5. It is required to be noted that it was not the case of the plaintiff that he is the tenant of the defendant. He has also not alleged that there was a relation ship of landlord and tenant between the plaintiff and the defendant. Therefore, as such it cannot be said to be a dispute between the landlord and the tenant. The main prayer and the thrust of the arguments on behalf of the plaintiff was that he has purchased the superstructure from the defendant for an amount of Rs.3700/- and he has become the owner of the superstructure and that

thereafter he was paying rent of Rs.20/- per month to the Rajnagar Rice and Pulse Mills and the Rajnagar Rice and Pulse Mills has accepted the plaintiff as a tenant and incidentally, a declaration was sought that he is the tenant of the suit land. Now considering the aforesaid facts and circumstances, more particularly, as stated above, when there was no dispute between the landlord and tenant with regard to tenancy, in the facts and circumstances of the case, it cannot be said that the learned trial Court has committed any error in holding that the learned City Civil Court at Ahmedabad would have jurisdiction. So far as the merits of the case is concerned, though much not pressed and/or submission made, on going through the entire evidence on record, the learned trial Court has relied upon Exh-43, the receipt issued by the defendant to the effect that he has sold the superstructure to the plaintiff for an amount of Rs.3700/- on 18-5-1976 and handed over the possession of the superstructure to the plaintiff. On going through the entire record, it cannot be said that the learned trial Court has committed any error. On going through the same and the reasoning, this Court is in complete agreement with the reasoning and finding of the learned trial Court that the plaintiff has proved that the defendant has sold

the superstructure to him for an amount of Rs.3700/- on 18-5-1976 and handed over the possession of the superstructure to him.

6. For the reasons as stated above, the appeal fails and is required to be dismissed and is accordingly dismissed. No cost. Ad interim relief if any stands vacated forthwith.

(M.R.SHAH,J.)

shekhar/-